



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 23, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-1199

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Sustained
# 2	4.010 - Employee Time Off 9. Employees Absent Without Leave (AWOL) Are Not Paid for the Time of the Absence	Allegation Removed
# 3	4.040 - Sick Leave 7. Employees Contact a Sergeant/Supervisor When Taking Sick Leave	Allegation Removed
# 4	4.040 - Sick Leave 9. Employees Will Use Earned Sick Leave for a Medical Absence	Allegation Removed

Imposed Discipline

Resigned Prior to Proposed DAR - Discipline

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee had failed to report to work on multiple occasions during the years 2016 and 2017.

ADMINISTRATIVE NOTE:

The Named Employee in this case is a retired employee who was not represented by a bargaining unit during her time with SPD. For this reason, the 180-day timeline imposed by Collective Bargaining Agreements does not apply. As such, the 180-day deadline was administratively set as the date of this DCM.

SUMMARY OF INVESTIGATION:

On November 17, 2017 the Complainant, a former SPD Assistant Chief, contacted OPA to report that an employee, Named Employee #1 (NE#1), had been frequently absent from work prior to October of that year without that leave being approved. Subsequently, in October of 2017, NE#1 was granted FMLA leave. This investigation did not inquire into the circumstances of NE#1's FMLA leave except to note that NE#1 stated that she experienced health issues during some of the period covered by this investigation, necessitating sick leave in some instances. The period covered by this investigation spanned from January of 2016 to November of 2017. During that time, NE#1 was a civilian



employee assigned to the Traffic Section. She was directly supervised by two Captains – referred to here as Captain #1 and Captain #2 – who were responsible for approving her leave requests and timesheets.

OPA examined NE#1's timesheets for the relevant period and determined that during consecutive 6-month periods in 2016 and 2017, NE#1 recorded herself working 221 days, some of which were partial days. On 60 of those days (10 days under Captain #1 and 50 days under Captain #2), there was no evidence that NE#1 used her Proxy card to access her office at Park 90/5.

OPA interviewed NE#1 as part of this investigation. She stated that she was supervised by Captain #2 from July to October of 2017. She stated that Captain #2 had approved her request to flex her time, and that she did so without seeking approval in each instance. She had her own office and did not interact with Captain #2 regularly. She stated that when she wanted to take time off, she would make a verbal or electronic request to Captain #2, which he would approve. She also stated that, when she requested sick leave, she would place a call to Captain #2 on his cellular or desk phone. She would use a similar process to report when she was going to be late to work. She stated that she did not always receive an acknowledgement from Captain #2. In instances where NE#1 was unable to request sick leave or notify Captain #2 that she would be late beforehand, she stated that she would make notations in her timesheet to reflect the change. In addition, NE#1 noted that Captain #2 did not generally approve her timesheet. Instead, NE#1 noted (and OPA confirmed) that her timesheets were approved by an individual in the Seattle Department of Human Resources who was tasked with processing SPD's payroll.

OPA asked NE#1 about discrepancies between her timesheets and Proxy card records, which indicated that she worked on days where her Proxy card records did not show that she entered the SPD facility at Park 90/5. NE#1 stated that she would frequently walk into the building with others who were starting their shifts at the same time, primarily Parking Enforcement Officers (PEOs). She explained that, in these situations, she would not have swiped her card. On other occasions, NE#1 stated that she worked from home. She stated that she had been issued a Department laptop and that Captain #2 had given her approval to work from home as needed. She also had a Department-issued cell phone.

OPA interviewed the Captains who supervised NE#1. Captain #1, who supervised her until July 2016, stated that he met with her approximately once a week. He stated that, on some occasions, NE#1 was not in her office, in which case he would check her Outlook calendar. If he was still unable to locate NE#1, he would call her Department cell phone to verify her location and whether she was working. Captain #1 noted that it was not standard policy for a supervisor to have to call an employee to determine her location during work hours. Captain #1 stated that, in some instances, NE#1 would tell him that she was on her way to the office or that she was sick. Captain #1 stated that, during his time supervising NE#1, he began to feel that he had given her too much leeway regarding her attendance at work. As a result, he requested that she give him access to her Outlook calendar. He also stated that he went over sick leave policies with NE#1. He said that he was aware that NE#1 was dealing with health issues during this time, and that she also had ongoing family responsibilities. Considering this, he permitted her to flex her time. He did not give her specific permission to work from home.

Captain #2 stated that, for the first several months that he supervised the Traffic section, he did not realize NE#1 reported directly to him. He stated that he approved NE#1 to flex her time, and that his understanding was that she would regularly come in to work at any time between 0800 hours and 1000 hours. He stated that there were multiple instances in which NE#1 called him to report that she was sick or that she would be arriving late. He said that those calls generally went to his voicemail. According to Captain #2, he was unable to return those calls because NE#1's



Department cell phone was not set up. He also said that he approved NE#1 to work from home on various occasions and understood that she would be using her laptop to do so. He said that he did not recall assigning her projects that would involve extensive hardcopy document review, but that it was possible she did engage in that work.

OPA again interviewed NE#1 based on information obtained from interviewing Captain #1 and Captain #2. In addition, OPA contacted SPD IT, which provided documentation indicating that NE#1's credentials were used to log on to her laptop only twice in 2017, both on dates when her Proxy card was recorded as being swiped at Park 90/5. In her second interview, NE#1 stated that, under Captain #1, she was expected to seek flex time approval on a case-by-case basis. She stated that she recalled having a discussion with Captain #1 about scheduling time off but did not recall specifics. She recalled working from home on occasion while reporting to Captain #1, but primarily worked from home while reporting to Captain #2. NE#1 stated that she used her laptop while working from home and could not offer any explanation as to why Seattle IT only showed her login credentials being used twice in 2017, despite having claimed that she worked from home multiple times in that period. She stated that in some cases, she reviewed lengthy reports, manuals, and training materials. In her interview, NE#1 produced a lengthy document which she indicated was an SQL training manual and that she pointed to as an example of the type of documents she might review in addition to reports. She stated that on certain days, she would review documents exclusively and would not necessarily need to log in to her laptop in order to do work. NE#1 estimated that on a typical day working from home she would review emails, read and make hardcopy notes on documents. NE#1 affirmed that when she used her computer, she would use her SPD login credentials.

NE#1 also discussed how she would file her timesheets. She stated that she filed her own time, and that she consistently worked the hours stated or made notes after the fact to correct discrepancies. NE#1 stated that when she did have to make notes, she sometimes did so by printing out a copy of her timesheet and making hand notations. She stated that she did not recall ever running out of sick leave or marking herself as working when she was sick, and that, if this occurred inadvertently, she believed that she would have corrected it after the fact.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor

SPD Policy 4.010-POL-2 requires SPD employees to schedule time off with their supervisors. The policy states that: "Employees will contact their sergeant/supervisor before their scheduled work shift to request an unscheduled absence from duty." (SPD Policy 4.010-POL-2.) Inherent in this policy is the Department's expectation that employees have actually worked the hours they mark on their timesheets and that they take sick or vacation time for any dates upon which they do not intend to work.

As discussed above, there is sufficient evidence in the record establishing that NE#1 failed to provide timely notice to her supervisors prior to working from home or taking sick leave on multiple. This was required under SPD Policy 4.010.

Moreover, the evidence also raises serious questions as to the accuracy of NE#1's timesheets and whether she, in fact, performed her professional responsibilities on multiple occasions that she marked as workdays. Most notably, there were 60 days on which NE#'s Proxy card was not used to access her workplace. While perhaps on some of those occasions she did follow others into the building, it is improbable that she did so on all of those occasions. In



addition, while NE#1 claimed to be working from home on some of those occasions, this assertion is significantly undercut by the finding that her login credentials were used only twice on her Department laptop. OPA notes that SPD Policy 12.110-POL-6 requires SPD employees – whether civilian or sworn – to read their emails at least once per shift. By not logging into her laptop, she could not have done so and, thus, was not performing her work duties consistent with the Department's expectations.

The above conclusions are further buttressed the Captains' testimony that they would often have to contact NE#1 in order to determine her location. This adds OPA's finding that she failed to consistently schedule her time off or complete her timesheets in an accurate manner. Moreover, it appeared that one of NE#1's supervisors, Captain #1, was aware of this issue and counseled her on the Department's expectations regarding scheduled time off, and that subsequent to this counseling, the issue grew more severe rather, with the majority of her unaccounted-for time occurring under Captain #2's supervision.

Given the above, and when applying a preponderance of the evidence standard, OPA finds that NE#1 acted inconsistent with this policy. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

4.010 - Employee Time Off 9. Employees Absent Without Leave (AWOL) Are Not Paid for the Time of the Absence

OPA finds that this allegation is subsumed within the above allegation (see Named Employee #1 – Allegation #1). For this reason, it recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

4.040 - Sick Leave 7. Employees Contact a Sergeant/Supervisor When Taking Sick Leave

OPA finds that this allegation is subsumed within the above allegation (see Named Employee #1 – Allegation #1). For this reason, it recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

4.040 - Sick Leave 9. Employees Will Use Earned Sick Leave for a Medical Absence

OPA finds that this allegation is subsumed within the above allegation (see Named Employee #1 – Allegation #1). For this reason, it recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**